

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
MCC Missouri LLC	)	CSR 6651-E, 6654-E
	)	
Mediacom Southeast LLC	)	CSR 6652-E, 6653-E, 6657-E, 6658-E,
	)	6707-E, 6708-E, 6791-E, 6806-E, 6819-E,
	)	6822-E, 6835-E, 6836-E, 6837-E, 6838-E,
	)	6844-E
	)	
Seventeen Petitions for Determination of Effective	)	
Competition in Thirty-Five Local Franchise Areas	)	
in Missouri and Two in Kansas	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 28, 2005**

**Released: October 31, 2005**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. This Order considers seventeen petitions which cable operators (the “Cable Operators”) have filed with the Commission pursuant to Sections 76.7, 76.905(b)(1) & (2) and 76.907 of the Commission’s rules<sup>1</sup> for a determination that such operators are subject to effective competition pursuant to Section 623(a)(2) of the Communications Act of 1934, as amended (“Communications Act”),<sup>2</sup> and are therefore exempt from cable rate regulation in the communities listed in Attachment A (the “Communities”). No opposition to any petition was filed. Finding that the Cable Operators are subject to effective competition in the listed Communities, we grant the petitions.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>3</sup> as that term is defined by Section 623(l)(1) of the Communications Act<sup>4</sup> and Section 76.905 of the Commission's rules.<sup>5</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>6</sup>

<sup>1</sup> 47 C.F.R. §§ 76.7, 76.905 (b)(1, 2), 76.907.

<sup>2</sup> 47 U.S.C. § 543(a)(2).

<sup>3</sup> 47 C.F.R. § 76.906.

<sup>4</sup> 47 U.S.C. § 543(l)(1).

<sup>5</sup> 47 C.F.R. § 76.905.

<sup>6</sup> See 47 C.F.R. §§ 76.906-07(b).

## II. DISCUSSION

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPDs") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.<sup>7</sup> Turning to the first prong of this test, the direct broadcast satellite ("DBS") service of DirecTV, Inc. ("DirecTV") and DISH Network ("DISH") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>8</sup> The two DBS providers' subscriber growth reached approximately 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the fourth largest, MVPD provider.<sup>9</sup> In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the communities listed on Attachment A are DBS subscribers, we conclude that the population of the communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including at least one non-broadcast channel.<sup>10</sup> We further find that the Cable Operators have demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area.<sup>11</sup> The Cable Operators sought to determine the competing provider penetration in the Communities by purchasing subscriber tracking reports that identified the number of subscribers attributable to the DBS providers within the Communities on a nine-digit zip code basis.<sup>12</sup> Most of the Cable Operators assert

---

<sup>7</sup> 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>8</sup> *See Bright House Networks, LLC*, DA-05-2511 at ¶ 3 (rel. Sept. 27, 2005).

<sup>9</sup> *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, 20 FCC Rcd 2755, 2792-93 (2005) ¶¶ 54-55.

<sup>10</sup> *See* 47 C.F.R. § 76.905(g).

<sup>11</sup> *See supra* n.7.

<sup>12</sup> MCC Missouri LLC Petition CSR 6651-E at 6 & Exhibits E & F; Mediacom Southeast LLC Petition CSR-6652-E at 6 & Exhibits E & F; Mediacom Southeast LLC Petition CSR-6653-E at 6 & Exhibits E & F; MCC Missouri LLC Petition CSR 6654-E at 6 & Exhibits E & F; Mediacom Southeast LLC Petition CSR-6657-E at 6 & Exhibits E & F; Mediacom Southeast LLC Petition CSR-6658-E at 6 & Exhibits E & F; Mediacom Southeast LLC Petition CSR-6707-E at 6 & Exhibits E & F; Mediacom Southeast LLC Petition CSR-6708-E at 6 & Exhibits E & F; Mediacom Southeast LLC Petition CSR-6791-E at 6 & Exhibits E & F; Mediacom Southeast LLC Petition CSR-6806-E at 6 & Exhibits E & F; Mediacom Southeast LLC Petition CSR-6819-E at 6 & Exhibits E & F; Mediacom Southeast LLC Petition CSR-6822-E at 6 & Exhibits E & F; Mediacom Southeast LLC Petition CSR-6835-E at 6-7 & Exhibits E & F; Mediacom Southeast LLC Petition CSR-6836-E at 6-7 & Exhibits E & F; Mediacom Southeast LLC Petition CSR-6837-E at 6-7 & Exhibits E & F; Mediacom Southeast LLC Petition CSR-6838-E at 6-7 & Exhibits E & F; Mediacom Southeast LLC Petition CSR-6844-E at 6 & Exhibits E & F. We have found the nine-digit (or "Zip+4") method of determining DBS subscribers within a franchise area to be reasonable and sufficiently reliable for purposes of determining the second prong of the competing provider test and the presence of effective competition.

(continued....)

that they are the largest MVPD in the Communities because their subscribership exceeds the aggregate DBS subscribership for those franchise areas.<sup>13</sup>

5. In three communities – Seymour, Crystal Lakes, and Woods Heights, Missouri – the Cable Operator is unable to determine with certainty the largest MVPD. In each community, the Cable Operator has a penetration of over 15 percent<sup>14</sup> and the DBS providers DirecTV and DISH have combined penetration over 15 percent also.<sup>15</sup> Thus, if the Cable Operator is the largest MVPD in each franchise area, then the aggregate DBS subscribership surpasses the 15 percent penetration threshold. Conversely, if one of the DBS providers is the largest MVPD, the Cable Operator's penetration rate surpasses the 15 percent threshold of the second prong of the competing provider test. Based on this record, we find that the Cable Operators have demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the each of the three communities in question. Therefore, the second prong of the competing provider test is satisfied.

6. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, and the data about penetration stated in the preceding paragraph, we find that the Cable Operators have demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that the Cable Operators have submitted sufficient evidence demonstrating that their cable systems serving the Communities set forth in Attachment A are subject to competing provider effective competition.

---

(...continued from previous page)

*Adelphia Cable Commun.*, 20 FCC Rcd 4979, 4982 (2005) ¶ 10; *Mediacom Minnesota LLC*, 20 FCC Rcd 4984, 4987 (2005) ¶ 7.

<sup>13</sup> MCC Missouri LLC Petition CSR 6651-E at 6; Mediacom Southeast LLC Petition CSR-6652-E at 6; Mediacom Southeast LLC Petition CSR-6653-E at 7 (in Billings, Cabool, Forsyth, Kimberling City, Mansfield, and Marshfield, and perhaps for Seymour, Missouri); MCC Missouri LLC Petition CSR 6654-E at 6; Mediacom Southeast LLC Petition CSR-6657-E at 6 (in Albany, Bethany, Cameron, Excelsior Estates, Excelsior Springs, Homestead, Lawson, and Norborne, and perhaps in Crystal Lakes and Woods Heights); Mediacom Southeast LLC Petition CSR-6658-E at 6; Mediacom Southeast LLC Petition CSR-6707-E at 6; Mediacom Southeast LLC Petition CSR-6708-E at 6; Mediacom Southeast LLC Petition CSR-6791-E at 6; Mediacom Southeast LLC Petition CSR-6806-E at 6; Mediacom Southeast LLC Petition CSR-6819-E at 6; Mediacom Southeast LLC Petition CSR-6822-E at 6; Mediacom Southeast LLC Petition CSR-6835-E at 6; Mediacom Southeast LLC Petition CSR-6836-E at 6; Mediacom Southeast LLC Petition CSR-6837-E at 6; Mediacom Southeast LLC Petition CSR-6838-E at 6; Mediacom Southeast LLC Petition CSR-6844-E at 6.

<sup>14</sup> Mediacom Southeast LLC Petition CSR-6653-E at 6 (in Seymour, Missouri, cable operator Mediacom has a penetration of 20.25%); Mediacom Southeast LLC Petition CSR-6657-E at 7 (in Crystal Lakes, Missouri, cable operator Mediacom has a penetration of 36.09%; in Woods Heights, Missouri, it has a penetration level of 42.20%).

<sup>15</sup> Mediacom Southeast LLC Petition CSR-6653-E at 6 (in Seymour, Missouri, DirecTV and DISH have a combined penetration of 24.19%); Mediacom Southeast LLC Petition CSR-6657-E at 6 (in Crystal Lakes, Missouri, DirecTV and DISH have a combined penetration of 21.05%; in Woods Heights, Missouri, they have a combined penetration level of 50.81%).

### III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions filed by MCC Missouri LLC and Mediacom Southeast LLC for a determination of effective competition in the Communities listed on Attachment A **ARE GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing the Cable Operators **ARE REVOKED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>16</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division, Media Bureau

---

<sup>16</sup> 47 C.F.R. § 0.283.

## Attachment A

## Cable Operators Subject to Competing Provider Effective Competition

## MCC Missouri LLC: CSR 6651-E

<b>Community</b>	<b>CUID</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Hermann	MO0258	33.86%	1149	389

## Mediacom Southeast LLC: CSR 6652-E

<b>Community</b>	<b>CUID</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Cassville	MO0458	20.1%	1194	240

## Mediacom Southeast LLC: CSR 6653-E

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Billings	MO0532	26.21%	454	119
Cabool	MO0649	15.97%	883	141
Forsyth	MO0595	21.57%	788	170
Kimberling	MO0505	30.05%	1045	314
Mansfield	MO0639	15.07%	564	85
Marshfield	MO0387	27.35%	2256	617
Seymour	MO0638	24.19%	711	172

## MCC Missouri LLC: CSR 6654-E

<b>Community</b>	<b>CUID</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Holt's Summit	MO0433	25.89%	1124	291

**Mediacom Southeast LLC: CSR 6657-E**

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Albany	MO0094	40.79%	858	350
Bethany	MO0068	30.28%	1344	407
Cameron	MO0145	30.76%	2263	696
Crystal Lakes	MO1015	61.65%	133	82
Excelsior Estates	MO1012	21.05%	95	20
Excelsior Springs	MO0333 MO0334	26.16%	4079	1067
Homestead	MO1009	25.00%	72	18
Lawson	MO0548 MO0618	34.60%	818	283
Norborne	MO0550	15.92%	358	57
Woods Heights	MO0571	50.81%	248	126

**Mediacom Southeast LLC: CSR-6658-E**

<b>Community</b>	<b>CUID</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Osceola	MO0603	27.08%	373	101

**Mediacom Southeast LLC: CSR-6707-E**

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Brunswick	MO0405	19.48%	426	83
Salisbury	MO0112	27.42%	744	204

**Mediacom Southeast LLC: CSR 6708-E**

<b>Communities</b>	<b>CUID</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Marceline	MO0114	27.62%	1079	298

**Mediacom Southeast LLC: CSR 6791-E**

<b>Community</b>	<b>CUID</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Caruthersville	MO0010	16.65%	2643	440

**Mediacom Southeast LLC: CSR 6806-E**

<b>Community</b>	<b>CUID</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Butler	MO0065	38.19%	1723	658

**Mediacom Southeast LLC: CSR 6819-E**

<b>Community</b>	<b>CUID</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Lowry City	MO0602	18.94%	301	57

**Mediacom Southeast LLC: CSR 6822-E**

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Ash Grove	MO0651	19.06%	577	110
Greenfield	MO0469	18.78%	623	117
Miller	MO0648	21.67%	323	70
Mount Vernon	MO0337	24.60%	1606	395

**Mediacom Southeast LLC: CSR 6835-E**

<b>Community</b>	<b>CUID</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Appleton City	MO0093	23.19%	552	128

**Mediacom Southeast LLC: CSR 6836-E**

<b>Community</b>	<b>CUID</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Carrollton	MO0131	21.56%	1716	370

**Mediacom Southeast LLC: CSR 6837-E**

<b>Community</b>	<b>CUID</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Toronto	KS0421	28.07%	171	48

**Mediacom Southeast LLC: CSR 6838-E**

<b>Community</b>	<b>CUID</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Carbondale	KS0337	21.00%	581	122

**Mediacom Southeast LLC: CSR 6844-E**

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households+</b>	<b>DBS Subscribers+</b>
Jasper	MO0478	18.83%	409	77
Liberal	MO0504	22.56%	328	74

CPR = Percent DBS penetration

+ = See Cable Operator Petitions